BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Appeal No. 34 *of* 1905-06.

Appellants		Respondent
A. Bhima Rao and other raiyats of Holalvadi, Nanjangud Taluk	*Versus*	K. Narasimhaiya, shop-keeper, Mysore City.

Subject.

Claim respecting the occupation of Government waste or vacant land Survey No. 1 of Holalvadi village in the Nanjangud Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

Survey No. 1 is a kharab or unassessed waste, being part of the bed of an old abandoned tank. It adjoins the village site. From the commencement, it was being used for such communal purposes as the storage of manure, etc. A small quantity of water sometimes stands on the low lying portion of it and it has been long used by the cattle of the village. Some years back, the applications of certain persons for the grant of the land for cultivation, seem to have been rejected after duly considering the objection taken to the same by the raiyats of the village (*vide* Amildar's report dated the 25th October 1901). In August 1900, a similar application made by one Muddappa was rejected by the Deputy Commissioner. In reporting upon that petition, the Amildar expressed the opinion that the land should not be given out for cultivation. Subsequently, there were several petitions from several individuals asking that portions of the land be given to them for building and kindred purposes. The Amildar, with the concurrence of the villagers, was in favor of the grant and submitted a recommendation accordingly. During the pendency of the correspondence on the subject, the respondent asked that the whole number be given to him for garden cultivation, for the small upset price of Rs. 20 per acre in consideration of the loss he had sustained in connection with certain other lands which in previous years he had purchased for large sums at revenue sales. The villagers objected to the grant thus applied for. The Amildar and the Assistant Commissioner nevertheless recommended the grant. They knew at the time that the villagers would be subjected to serious discomfort and inconvenience if the land were given away to an outsider for cultivation. They also knew of the existence of the previous darkhasts. In the face of this and of their belief that if put up to competition the land would realise a much higher price than the nominal price offered for it by the respondent, they chose to consider that the objection taken by the villagers should be over-ruled, and that the respondent's application should be favorably dealt with. The Deputy Commissioner in reliance upon their opinion wrote to the Revenue Commissioner recommending the grant. The Revenue Commissioner thought that the price offered was too low. He further seemed to think that the villager's objection based upon the absence of gomal was not wholly without force. Under the circumstances represented to him, however, he saw no reason to withhold the sanction applied for which accordingly he conveyed on 22nd May 1905. This sanction was passed on to the Amildar for needful action on 7th June 1905. The Amildar accepted the price from the respondent on the 16th idem, and on the same date issued to him a saguvali chit pending the assessment being fixed in due course by the Survey Department. This was done in spite of the pendancy of two petitions from one Bhima Rao, dated 21st and 25th April 1905, in which he had referred to the several previous darkhasts both from himself and from other individuals and not only protested against the grant to the respondent then under contemplation but also offered to take the land himself on the same terms as those offered by the respondent. He even asked that the land be sold by auction if it could not be given to him for an upset price. The local authorities had evidently made up their minds that the respondent should be given the land on favorable terms to the prejudice of the villagers and the exclusion of the prior darkhastdars. In this they were solely influenced by their estimate of the loss which the respondent had sustained in connection with certain other sales. The one had nothing whatever to do with the other and yet the respondent was shown a concession to which he was not reasonably entitled. As soon as the villagers became conversant of what was going on, they hastened to the Deputy Commissioner with a protest on which that officer passed the following order on the date of the saguvali chit itself. "As there appears to be something in this objection, the order already issued (*i. e.*, the order intimating the Revenue Commissioner's sanction) will be held in abeyance if not given effect to, pending inspection of the land, one day next week." This order does not appear to have been formally communicated to the respondent. The Deputy Commissioner inspected the land a few days after, *i. e.*, on the 29th June, and on the next day he passed an order as follows:—"I inspected this land yesterday and find that I was misled regarding it, as it is really required for village purposes, storage of manure, and extending the village at any future time, and that it should not have been given out for cultivation. As however orders have already been received from the Revenue Commissioner on the subject on my recommendation, I am unable to move further in the matter and the only course left is for the petitioners to apply to the Revenue Commissioner to revise his order." The Revenue Commissioner, who was thereupon appealed to, informed the petitioners (appellants) that "as the sanction for the

grant of the land for cultivation purposes was accorded from his office, they (petitioners) should appeal to Government." Hence the present appeal, immediately on the institution of which, *i. e.*, on the 5th August 1905, Government passed an order that further proceedings should be stayed and that if the respondent had been put in possession he should be directed not to interfere with the land pending the disposal of the appeal.

2. It is abundantly clear from the Deputy Commissioner's orders quoted above and from his report, that he was misled into making a serious mistake which he is anxious to see rectified. The land according to him is fit for building purposes. That was also the opinion of af ormer Amildar who had reported upon the antecedent darkhasts to which reference has already been made and which were ignored in dealing with the respondent's darkhast. The village is a large one and appears to stand in real, and urgent need of extension. By its situation, the land in question is admirably suited for the location of such extension. The respondent's contention that another land equally eligible is readily available for the purpose, is clearly untenable as will be seen from an order passed by the Amildar on the 25th December 1900, rejecting one Narasanna's darkhast for the land (No. 164 measuring only one acre and twenty-three guntas) on the ground that there was a temple on it, and that moreover a fair was being held on it every year. It is unsatisfactory that on a ground manifestly inadmissible, the local authorities thought it proper to ignore all previous correspondence and to prefer an outsider like the respondent to both the villagers generally and the previous applicants in particular. The needs of the village failed to receive from them the consideration to which they were undoubtedly entitled. Though not ear-marked and formally set apart for communal purposes, it is obvious that no assessment was fixed on the land which, being then a kharab, was for a long time being used by the villagers for the common benefit, such as storage of manure and straw, cattle-stand, cattle-pond, etc. The higher portion is suitable for building purposes and the lower for collection of water for cattle. The correspondence shows that the latter was intended to be excluded and reserved, but even this was not done. This is not an occupied waste, and its disposal ought not to have been ordered as a routine matter and without proper enquiry. The grant is liable to be set aside on sufficient cause shown. Government are satisfied that this is a case in which authorities below did not evince a judicious discretion and that their interference is imperatively called for and should not be refused. The Deputy Commissioner himself is of that opinion and Government have no hesitation in agreeing with him. The cancelment of the grant made to the respondent so as to render possible the reservation of the land for communal purposes, is the only order which the Government consider proper under the circumstances. There were several applicants of whom the respondent was the last. A grant to the latter for an upset price much below the market value, was a proceeding for which there was no justification. A public sale was a more correct proceeding. And even this was extremely undesirable in view of the fact that a reservation was necessary in the interests of the village.

3. The respondent poses as a seriously aggrieved party in that he asserts that he has *bonâ fide* spent such a considerable sum as Rs. 1,500 on improvements. This assertion is wholly without foundation. He knew that his application was being strenuously opposed by prior applicants as well as by the villagers. On the date of the Amildar's permit itself, the Deputy Commissioner placed on record his opinion that there was something in the objection and that the matter should be further investigated. The respondent could not have been unaware of this though a formal intimation of it was somehow not sent to him. Within a fortnight of the grant, the Deputy Commissioner inspected the land and expressed his opinion against the propriety of the grant. Government decline to believe that the respondent remained in ignorance even of this. The Deputy Commissioner's report shows that up to that date, no improvements of any kind had been carried out by the respondent. Between that date and the date of the interdiction issued by Government, some little work seem to have been done by the respondent, not in good faith but in order to make out a grievance for himself. The mahazar prepared at the Sheristadar's inspection of 20th August 1905 clearly shows that beyond hurriedly getting some pits dug and plantain plants put in, at a cost of about Rs. 100, the respondent had done nothing whatever to the land by way of improvement or preparation, and that even this small cost had only been incurred by him within the preceding twenty days. The matter was *pendentelite* and the respondent at his own risk endeavoured to manufacture a claim for himself in the hope of being thus enabled to successfully resist the case made against him. There was no *bonâ fide* improvement and consequently no compensation is claimable.

4. For the foregoing reasons the grant relied upon by the respondent is cancelled, thus setting free the land for appropriation for non-agricultural purposes in the manner suggested by the Deputy Commissioner.

No. R. 10327—*R.M.* 90-05-7, *dated Bangalore, 1st February* 1906.

Copy of the above is forwarded to the Revenue Commissioner in Mysore, together with the records received with his letter No. 2140, dated the 28th August 1905.